MOTION FILED
JAN 12 1993

No. 92-1037

IN THE

Supreme Court of the United States

October Term, 1992

RALPH J. MILLER, M.D.,

Petitioner,

vs.

INDIANA HOSPITAL, a corporation; HENRY F. HILD; DONALD F. SMITH; WILLIAM R. McMILLEN; JOHN S. SIMPSON; THOMAS S. BARBOR; SAMUEL W. JACK, JR.; MRS. C. FRED HILDEBRAND; MRS. WANDA M. WEYANDT; HARRY C. McCREARY; C. WILMER JOHNSTON; GEORGE M. EVANS; DONALD S. BRODY; ROGER J. RESCHINI; JOSEPH KOVALCHICK; WILLIAM G. EVANS, M.D.; MELVIN C. WILLIAMS, M.D.; ROBERT G. GOLDSTROHM, M.D.; DAVID C. HUGHES, M.D.; RALPH F. WALDO, M.D.; HERBERT L. HANNA, M.D.; RICHARD N. FREDA, M.D.; FRANK WEINER, M.D.; HENRY MITCHELL, M.D.; RALPH R. BROWN, M.D.; COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF HEALTH; H. ARNOLD MULLER, M.D.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE* SEMMELWEIS SOCIETY, IN SUPPORT OF PETITIONER

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January 11, 1993

Batavia Times Publishing Co.
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Pittsburgh, Pa. (412) 881-7463

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MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PETITIONER, RALPH J. MILLER, M.D.

AND NOW, comes the Semmelweis Society, *amicus curiae, pro se,* and files the following Motion for Leave to File a Brief *Amicus Curiae* in Support of Petitioner, Ralph J. Miller, M.D.

1. The Semmelweis Society is a non-profit corporation whose physician members share a common commitment to fair treatment of doctors in hospital peer review and privilege matters. The Society is comprised of physicians throughout the United States who have been aggrieved by bad faith, economically motivated peer review. The Society is dedicated to ensuring that the peer review process is not used to driving competent doctors from the practice of medicine in their chosen field and geographic region by the denial or revocation of their hospital privileges for reasons having nothing to do with the improvement of quality of medical care.

2. The use of the peer review system for anti-competitive purposes is a frequent occurrence with wide-ranging negative implications for the availability of affordable quality medical care throughout the United States. While the legal issues have been discussed in Dr. Miller's Petition for Writ of Certiorari, the breadth of the problem and the importance of the interests impacted by bad faith peer review have not been addressed.

3. For the above reasons, the Semmelweis Society seeks to file a brief *amicus curiae* in support of Petitioner, Ralph J. Miller, M.D.

4. The Respondents have refused to consent to the filing of a brief *amicus curiae* by the Semmelweis Society.

5. A copy of the brief which the Society intends to file in the event that this Motion is granted is attached hereto as Exhibit A.

WHEREFORE, the Semmelweis Society, *amicus curiae*, requests that this Honorable Court grant its Motion for Leave to File a Brief *Amicus Curiae* in Support of Petitioner, Ralph J. Miller, M.D.

Respectfully submitted,

By: _____
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EXHIBIT A

IN THE

Supreme Court of the United States

October Term, 1992

No. 92-1037

RALPH J. MILLER, M.D.,

Petitioner,

vs.

INDIANA HOSPITAL, a corporation; HENRY F. HILD; DONALD F. SMITH; WILLIAM R. McMILLEN; JOHN S. SIMPSON; THOMAS S. BARBOR; SAMUEL W. JACK, JR.; MRS. C. FRED HILDEBRAND; MRS. WANDA M. WEYANDT; HARRY C. McCREARY; C. WILMER JOHNSTON; GEORGE M. EVANS; DONALD S. BRODY; ROGER J. RESCHINI; JOSEPH KOVALCHICK; WILLIAM G. EVANS, M.D.; MELVIN C. WILLIAMS, M.D.; ROBERT G. GOLDSTROHM, M.D.; DAVID C. HUGHES, M.D.; RALPH F. WALDO, M.D.; HERBERT L. HANNA, M.D.; RICHARD N. FREDA, M.D.; FRANK WEINER, M.D.; HENRY MITCHELL, M.D.; RALPH R. BROWN, M.D.; COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF HEALTH; H. ARNOLD MULLER, M.D.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE SEMMELWEIS SOCIETY, *AMICUS CURIAE,* IN SUPPORT OF PETITIONER, RALPH J. MILLER, M.D.

INTEREST OF *AMICUS CURIAE*

The Semmelweis Society is a non-profit corporation whose physician members throughout the United States share a common commitment to the fair treatment of doctors in hospital peer review and privilege matters. The Society takes its name from the 19th century Hungarian physician, Ignaz Semmelweis, who was vilified by his colleagues and superiors in the medical profession because of his strongly held belief that physicians should wash their hands and use clean instruments before delivering babies and performing surgery. His life ended in disgrace for advocating views which ultimately led to the breakthroughs of Lister and Pasteur.

Semmelweis is remembered in history as the classic victim of abuse of power by fellow medical professionals to the detriment of society. The Semmelweis Society is dedicated to seeing that the peer review process in the United States is not used to drive competent doctors from practicing in the professional field and geographic area of their choice by the denial or revocation of their hospital privileges for reasons that have nothing to do with the improvement of the quality of medical care. The use of the peer review system—so prevalent in the health care industry—for anti-competitive purposes has been a long-standing concern of the Society. As a result of this concern, the Society has previously appeared before this Honorable Court as an *amicus curiae* in a brief supporting Dr. Timothy Patrick in the landmark antitrust case of *Patrick v. Burget*, 486 U.S. 94 (1988).

ARGUMENT

While the legal and factual issues particular to this case have been thoroughly addressed in the Petition for Writ of Certiorari, the magnitude of the problem of bad faith peer review—a problem so detrimental to the societal good and to the rights of patients to have access to the best and most affordable health care—has not been made clear. Accordingly, and because the courts' decisions in this case will have a dramatic impact upon peer review and the physicians and patients affected thereby, the Semmelweis Society respectfully submits this brief asking this Honorable Court to grant a writ of certiorari to review the potentially far-reaching decisions of the lower courts in the light of the persuasive and meritorious arguments set forth in Dr. Miller's Petition.

The members of the Semmelweis Society assert that quality as well as price fairness to the paying consumer of health care services is best achieved through vigorous competition. Through personal experience, the members of the Society know only too well that the health care market has been dominated for many years by practices which are anti-competitive and, which, consequently, have denied market entry to skilled practitioners, stifled innovation and alternative methods of health care delivery, and destroyed operations designed to allow prices to be dependent upon competitive forces of the marketplace. Many of the anti-competitive ills of the health care marketplace emanate from peer review processes such as that found in the case now before this Court.

The Semmelweis Society strongly believes that the facts of this case serve to underscore the destructive and insidious nature of bad faith peer review decisions. For it

is within the peer review setting, where competitors review the services of other competitors, that decisions are routinely made in hospitals across the United States which drastically affect the practices and livelihoods of physicians and which unfortunately but frequently emanate from anti-competitive motives. In this case, moreover, the conduct of the Respondents is so outrageous and flagrantly anti-competitive that this Court should afford Dr. Miller's Petition the degree of careful consideration commensurate with society's obvious interest in preventing and curing such professional and judicial injustices. Indeed, this Court should demonstrate a healthy skepticism toward the entry of summary judgment in any antitrust case in which the evidence of anti-competitive motive and effect is as blatant as in the case now before the Court.

Peer review is the cutting tool for economic control in the medical profession. It allows for the creation and maintenance of monopolies. The painful truth is that many within the health care marketplace have been ready and willing to utilize this tool for anti-competitive ends. Data collected and analyzed by the Semmelweis Society indicates that as much as 80% of peer review decisions are dictated by economic concerns. In such an environment, the ideal of competitive health care practices with resultant cost containment and quality improvement can barely be expected to survive, let alone flourish. Conduct such as that of the Respondent in this case, and judicial decisions such as those of the lower courts in this case, can only serve to perpetuate this stifling environment. Accordingly, this Honorable Court should intervene by granting the Petition for Writ of Certiorari. As Edmund Burke once staed, "The only thing necessary for the triumph of evil is for good men to do nothing."

CONCLUSION

For the foregoing reasons, the Semmelweis Society, as *amicus curiae,* urges this Honorable Court to grant the Petition for Writ of Certiorari of Ralph J. Miller, M.D.

Respectfully submitted,

By: _____

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